



# FEDERAL ELECTION COMMISSION

Washington, DC 20463

## MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel *KCS*

DATE: March 22, 2000

SUBJECT: MUR's 4924 & 4926-First General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of \_\_\_\_\_

Open Session \_\_\_\_\_

Closed Session \_\_\_\_\_

### CIRCULATIONS

SENSITIVE ☒  
NON-SENSITIVE ☐

72 Hour TALLY VOTE ☒

24 Hour TALLY VOTE ☐

24 Hour NO OBJECTION ☐

INFORMATION ☐

### DISTRIBUTION

COMPLIANCE ☒

Open/Closed Letters ☐

MUR ☐

DSP ☐

STATUS SHEETS ☐

Enforcement ☐

Litigation ☐

PFESP ☐

RATING SHEETS ☐

AUDIT MATTERS ☐

LITIGATION ☐

ADVISORY OPINIONS ☐

REGULATIONS ☐

OTHER ☐

05410-363-40-02

MAR 22 2000

**FEDERAL ELECTION COMMISSION**  
999 E Street, NW  
Washington, DC 20463

**SENSITIVE**

**FIRST GENERAL COUNSEL'S REPORT**

MURS: 4924 and 4926

DATES COMPLAINTS FILED: 9/10/1999  
9/21/1999

DATES OF NOTIFICATION: 9/15/99  
9/24/99

SOL: 9/2004

STAFF MEMBER: Anne A. Weissenborn

COMPLAINANTS: Peter T. Flaherty  
Conservative Campaign Fund

Jeffrey S. Smith

RESPONDENTS: Hillary Rodham Clinton  
Hillary Rodham Clinton for US Senate Exploratory Committee  
William J. Cunningham, III, as treasurer  
Terence McAuliffe

RELEVANT STATUTES: 2 U.S.C. § 441a(a)(1)(A)  
2 U.S.C. § 441a(f)

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

**I. ACTION RECOMMENDED**

That the Commission find no reason to believe that Hillary Rodham Clinton, the  
Hillary Rodham Clinton for US Senate Exploratory Committee and William J.  
Cunningham, III, as treasurer, and Terence McAuliffe violated the Federal Election  
Campaign Act of 1971, as amended ("the Act").

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## **II. GENERATION OF MATTERS**

On September 10, 1999, Peter T. Flaherty filed a complaint on behalf of the Conservative Campaign Fund alleging that Hillary Rodham Clinton as a candidate for federal office, the Hillary Rodham Clinton for U.S. Senate Exploratory Committee, Inc. and Terence McAuliffe had violated the Act as a result of Mr. McAuliffe's provision of collateral for a bank loan being sought by Ms. Clinton for the purchase of a home in the State of New York. This complaint was designated MUR 4924. On September 21, 1999, Jeffrey S. Smith filed a complaint against Hillary Rodham Clinton alleging that she had violated the Act as a result of the same transaction cited in the earlier complaint. This second complaint was designated MUR 4926.

Respondents were notified of the complaints on September 15 and September 24, 1999. A joint response addressing both complaints was received on October 29, 1999.

## **III. FACTUAL AND LEGAL ANALYSIS**

### **A. The Law**

The Act defines a candidate as an individual who is seeking nomination or election to federal office and who has received contributions or made expenditures aggregating in excess of \$5,000 or has consented to another person receiving contributions or making expenditures on his or her behalf that aggregate more than \$5,000. 2 U.S.C. § 431(2). Pursuant to 11 C.F.R. § 100.7(b)((1), "funds received solely for the purpose of determining whether an individual should become a candidate are not contributions. . . . If the individual subsequently becomes a candidate, the funds received are contributions subject to the reporting requirements of the Act."

The Act defines "contribution" as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office . . . ." 2 U.S.C. § 431(8)(A). Bank loans are not in themselves considered contributions provided they meet certain statutory standards, pursuant to 2 U.S.C. § 431(8)(B)(vii); however, "such loan shall be considered a loan by each endorser or guarantor . . . ." The Commission's regulations state that "the term *loan* includes a guarantee, endorsement, or any other form of security." 11 C.F.R. § 100.7(a)(1)(i).

Contributions from individuals are limited to \$1,000 per election. 2 U.S.C. § 441(a)(1)(A). Recipient candidates and their committees may not accept contributions which exceed the statutory limitations. 2 U.S.C. § 441a(f).

#### **B. The Complaints**

The complaint in MUR 4924 alleges that, as of the date of the complaint, Hillary Rodham Clinton was a candidate for federal office and had "secured a loan commitment for \$1,350,000 from Bankers Trust Company" to purchase a house for purposes of establishing New York residency "in order to qualify to run for the Senate." The complaint cites a statement released by the White House Press Secretary on September 6, 1999 announcing the house purchase and stating that "[t]he loan will be secured by a mortgage on the property, as well as by a guaranty from Terry McAuliffe." According to the complaint, "Published accounts of the transaction established that McAuliffe was providing the \$1,350,000 in cash as a deposit to the bank to establish the necessary collateral for the mortgage." The complaint asserts, "As such, McAuliffe's \$1,350,000

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cash deposit constitutes a contribution which is \$1,349,000 over the legal limit" of \$1,000 per election.

The complaint in MUR 4926 also alleges that Hillary Rodham Clinton was a candidate for federal office and asserts the illegality of the same loan collateral arrangement as that cited in the complaint in MUR 4924. According to this second complaint, "Upon information and belief, garnered from various news reports, Hillary Rodham Clinton, along with her husband, has solicited and/or accepted 1.35 million dollars worth of collateral as security for her mortgage. Upon information and belief, a chief fund raiser for Mr. Clinton, Terry McAuliffe, has posted said collateral and cosigned for or guaranteed the mortgage loan." (Emphasis in original.) According to this complaint, "The collateral, loan and/or guarantee is clearly made 'for the purpose of influencing' Mrs. Clinton's campaign for the U.S. Senate in that it specifically enables Mrs. Clinton to qualify for the ballot under New York law and, just as importantly, it enables Mrs. Clinton to free up additional assets, securities, currency etc., which would otherwise be unavailable if posted as a down payment or collateral, which she can now personally contribute to her own campaign." On this basis, the complaint alleges violations of unspecified Commission regulations.

### C. The Response

On October 29, 1999, counsel for all respondents in this matter filed a joint response addressing both complaints. At the outset the response states that "the complaints against Mr. McAuliffe are now moot and should be promptly dismissed because he will not be providing a personal guaranty to secure the bank loan obtained by the Clintons to purchase their house." The response then goes on to state that "[i]n

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preparation for the closing date in November 1999 . . . the Clintons have secured alternative financing from a different bank that does not include a guaranty by Mr. McAuliffe, or any other person."

The response also contains a defense of any future bank loan to be obtained in connection with the purchase of the house.<sup>1</sup>

#### **D. Discussion**

The complaints in MUR 4924 and 4925 both address only a mortgage ostensibly to be obtained by Hillary Rodham Clinton and her husband from Bankers Trust Company, with security to be furnished by Terence McAuliffe. As stated above, counsel for respondents has stated that the mortgage loan and guaranty cited in both complaints never in fact materialized. As a result, any campaign financing issues which might have arisen from such an arrangement are now hypothetical at best. Therefore, this Office recommends that the Commission find no reason to believe that Hillary Rodham Clinton, the Hillary Rodham Clinton for U.S. Senate Exploratory Committee, Inc. and William J. Cunningham, III, as treasurer, and Terence McAuliffe violated the Act in these matters and close the files.

### **III. RECOMMENDATIONS**

1. Find no reason to believe that Hillary Rodham Clinton, the Hillary Rodham Clinton for U.S. Senate Exploratory Committee, Inc. and Williams J. Cunningham, III, as treasurer, and Terence McAuliffe violated the Federal Election Campaign Act of 1971, as amended, in these matters.

<sup>1</sup> According to a report in the New York Times dated October 15, 1999, the financing of the purchase by President and Mrs. Clinton of a home in Chappaqua, New York, was to take the form of a 30-year, \$1.36 million mortgage at an annual interest rate of 7.5 percent for the first three years from PNC Mortgage, a subsidiary of the PNC Bank Corporation of Pittsburgh.


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2. Close the files in MUR 4924 and MUR 4926.
3. Approve the appropriate letters.

Lawrence M. Noble  
General Counsel

Date 3/21/00

BY:

  
Lois G. Lerner  
Associate General Counsel

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